Navinchandran a/l GM Naidu v Kassim bin Abd Rahman (sued on behalf of Pertubuhan Komanwel Diraja Malaysia (The Royal Commonwealth Society of Malaysia) in his capacity as President)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-374–07 OF 2020
QUAY CHEW SOON JC
2 FEBRUARY 2021

Civil Procedure — Striking out — Application for — Writ and statement of claim — Whether private social club's decision to declare member as persona non grata null and void — Whether member had right to enter and utilise premises pursuant to reciprocal arrangement entered — Whether member privy to reciprocal arrangement — Whether plain and obvious case for striking out — Rules of Court 2012 O 18 r 19(1)(b), (c) & (d)

Contracts — Privity of Contracts — Doctrine of privity of contract — Whether member was privy to reciprocal arrangement

This was the defendant's application to strike out the plaintiff's writ of summons and statement of claim ('SOC') pursuant to O 18 r 19 of the Rules of Court 2012 ('the ROC') and the inherent jurisdiction of the court. The defendant was the Royal Commonwealth Society of Malaysia ('RCS'), a private organisation registered under the Societies Act 1966. RCS was governed by its Constitution ('Constitution'). All members and guests who used the facilities at the premises of RCS ('premises') were bound by and must comply with the Constitution at all times. The of RCS ('council'), established under the Constitution, was the body responsible for the management of the affairs of RCS. The plaintiff was not a member of RCS but was a member of the Royal Ipoh Club ('affiliate club'). The affiliate club was a club affiliated with RCS under a reciprocal arrangement established in 1989 between RCS and the affiliate club ('reciprocal arrangement'). The plaintiff was allowed to enter the premises and use its facilities as a guest based on his membership in the affiliate club after he presented a 'letter of introduction' from the affiliate club. The plaintiff's action herein arose from a decision of the council which declared the plaintiff as a persona non grata due to his unbecoming behaviour ('decision'). The plaintiff averred, inter alia, that: (a) RCS had neglected or failed to issue any show cause notice with regards to the complaints; (b) RCS declared the plaintiff a persona non grata without giving him an opportunity to defend himself; (c) the plaintiff was not to be classified as a guest of RCS but as a member of RCS instead; (d) the plaintiff was to be categorised as an 'invited

member'; and (e) the plaintiff need not be invited or introduced by a member of RCS in order to gain access to the premises and that what was required of him was to possess a valid membership card of the affiliate club in order to enter the premises. The plaintiff further contended that his constitutional rights under the Federal Constitution were violated pursuant to: (i) art 5(1), the plaintiff had the right to be treated as a respectable affiliate club member; (ii) art 8(1), the plaintiff had the right to be treated fairly, equitably and equally in accordance with the law as other members of RCS; and (iii) art 10(1)(a), the plaintiff had the freedom of speech including the right to make a valid complaint and/or reprimand to the relevant party and the defendant must respect plaintiff's right.

Held, allowing the defendant's application with costs:

(1) The plaintiff was not a member of RCS. There was no continuing contractual relationship between the plaintiff and RCS. The plaintiff was a member of the affiliate club instead and was allowed to use the facilities at the premises only by virtue of the reciprocal arrangement. The reciprocal arrangement, however, was between RCS and the affiliate club and the plaintiff's access to the premises was based on his membership in the affiliate club. The plaintiff, therefore, had no locus standi to bring a claim against RCS as he was not a member of RCS and he was not privy to the reciprocal arrangement (see paras 17–18 & 21–22).

(2) The plaintiff's claim could not stand as the plaintiff had no capacity to sue the defendant in the first place. Even on the assumption that the plaintiff had a cause of action against the defendant, the plaintiff's action here was premature as the available avenues of domestic remedies were not exhausted by the plaintiff (see paras 24 & 49).

(3) The plaintiff was never conferred the honour of being elected to be an invited member of RCS. He was only permitted to gain access to the premises and use its facilities by virtue of the reciprocal arrangement. Taking the plaintiff's case at its highest (ie that he was an 'invited member') the council was still entitled to withdraw the privileges accorded to the plaintiff and to declare him as a persona non grata (see paras 27–29).

(4) A private organisation such as RCS had control over its members and was entitled to regulate and determine who could be its 'members'. It was not open to the plaintiff, who was permitted entry into the premises merely as a guest by virtue of the reciprocal arrangement, to come and assert a right to be a member of RCS. The 'letter of introduction' introduced the plaintiff as a member of the affiliate club and requested RCS to extend reciprocal privileges to the plaintiff. This showed that the plaintiff was not readily accepted onto the premises as a member, but he was merely

allowed reciprocal use of the facilities at the premises by virtue of the reciprocal arrangement (see paras 30 & 33).

(5) The plaintiff's cause of action could not rely solely on the alleged denial of natural justice when no duty was established in contract or tort between the plaintiff and RCS. A duty must first be established on the part of RCS in order for the plaintiff to have a right to be heard before the council or a disciplinary committee. The plaintiff had failed to establish any such duty (see para 37).

(6) RCS was a private organisation. It was not a public body and did not carry out any public duties. RCS did not owe legal duties to the public at large, save to its own members. Thus, the principle of natural justice in regards to RCS only applied to the members of RCS to whom it was contractually duty bound. The defendant did not have any contractual obligation towards the plaintiff (see paras 38 & 40).

(7) The courts ought to be slow to interfere with the domestic affairs of private or social clubs (such as RCS in this instance). The jurisdiction of the courts in this regard was of a limited and supervisory nature. The decision was made by the council upon deliberation of the complaints and the incident reports and based on the powers conferred under the Constitution. It was not for the court to review the merits or otherwise of the complaints and decide whether the council came to a right conclusion. The court's role was to see that the rules laid down in the Constitution were observed. in this regard, the council did observe the rules set out in the Constitution and acted in accordance with the powers conferred under the Constitution. There had been no breach of natural justice as: (a) the plaintiff was not a member of RCS; (b) there was no substantive nexus between RCS and the plaintiff; and (c) RCS did not have any contractual obligation nor any duty in tort towards the plaintiff (see paras 42–44).

(8) With respect to art 5(1) of the Federal Constitution, the defendant did not deprive the plaintiff of his life, personal liberty or livelihood. The decision of the council did not affect the plaintiff's membership with the affiliate club. The plaintiff remained a member of the affiliate club, so long as he abided by the rules and regulations of the affiliate club. In respect of art 8(1) of the Federal Constitution, the defendant did not unfairly discriminate against the plaintiff. The decision was made after deliberation of the complaints and the incident reports. The powers of the council were used fairly and reasonably and were not exercised arbitrarily. Furthermore, art 8(5)(a) provides that this Article did not invalidate or prohibit any provision regulating personal law. RCS was not a public authority. As a private organisation, RCS was entitled to regulate its own affairs and the way it dealt with its members and guests. As regards art 10(1) of the Federal Constitution, the defendant did not deny

A the plaintiff his right to freedom of speech and expression. The council took action against the plaintiff for cause based on the complaints and the incident reports (see paras 52 & 54).

(9) The particulars pleaded in the plaintiff's statement of claim bordered an B action for defamation which was not pleaded as a cause of action by the plaintiff. The quantification of general damages as provided by the plaintiff was also prohibited under O 18 r 12(1A) of the ROC. Moreover, the plaintiff's claim for RM2m in damages seemed to be rather frivolous and vexatious in nature. These coupled with the reasons as enumerated C above, the plaintiff's action against the defendant was a plain and obvious case for striking out (see paras 59–60).

[Bahasa Malaysia summary

Ini adalah permohonan defendan untuk membatalkan writ saman dan D pernyataan tuntutan ('PT') plaintif menurut A 18 k 19 Kaedah-Kaedah Mahkamah 2012 ('KKM') dan bidang kuasa sedia ada mahkamah. Defendan adalah Royal Commonwealth Society of Malaysia ('RCS'), sebuah organisasi swasta yang didaftarkan di bawah Akta Pertubuhan 1966. RCS dikawal oleh Perlembagaannya ('Perlembagaan'). Kesemua ahli dan tetamu yang E menggunakan kemudahan di premis RCS ('premis') adalah terikat dan mesti mematuhi Perlembagaan pada setiap masa. Majlis RCS ('majlis'), yang ditubuhkan di bawah Perlembagaan, adalah badan yang bertanggungjawab untuk menguruskan hal ehwal RCS. Plaintif bukan ahli RCS tetapi merupakan ahli Royal Ipoh Club ('kelab gabungan'). Kelab gabungan adalah sebuah kelab F yang bergabung dengan RCS di bawah perjanjian timbal balik yang ditubuhkan pada tahun 1989 antara RCS dan kelab gabungan ('perjanjian timbal balik'). Plaintif dibenarkan memasuki premis dan menggunakan kemudahannya sebagai tetamu berdasarkan keahliannya dalam kelab gabungan selepas beliau mengemukakan 'surat pengenalan' daripada kelab G gabungan. Tindakan plaintif di sini timbul daripada keputusan majlis yang mengisytiharkan plaintif sebagai *persona non grata* kerana tingkah lakunya yang tidak wajar ('keputusan'). Plaintif menegaskan, antara lain, bahawa: (a) RCS telah mengabaikan atau gagal mengeluarkan sebarang notis tunjuk sebab berkenaan dengan aduan; (b) RCS mengisytiharkan plaintif sebagai H *persona non grata* tanpa memberinya peluang untuk membela diri; (c) plaintif tidak boleh diklasifikasikan sebagai tetamu RCS sebaliknya sebagai ahli RCS; (d) plaintif hendaklah dikategorikan sebagai ahli jemputan'; dan (e) plaintif tidak perlu dijemput atau diperkenalkan oleh ahli RCS untuk mendapatkan akses ke premis tersebut dan apa yang dikehendaki daripadanya adalah untuk I memiliki surat yang kad keahlian kelab gabungan yang sah untuk memasuki premis. Plaintif seterusnya menegaskan bahawa hak perlembagaannya di bawah perlembagaan persekutuan telah dicabuli menurut: (i) perkara 5(1), plaintif mempunyai hak untuk dilayan sebagai ahli kelab gabungan kehormat; (ii) perkara 8(1), plaintif mempunyai hak untuk dilayan secara adil, saksama

dan sama rata mengikut undang-undang sebagai ahli RCS yang lain; (iii) perkara 10(1)(a), plaintif mempunyai kebebasan bersuara termasuk hak untuk membuat aduan dan/atau teguran yang sah kepada pihak yang berkenaan dan defendan mesti menghormati hak plaintif.

Diputuskan, membenarkan permohonan defendan dengan kos:

(1) Plaintif bukanlah ahli RCS. Tiada hubungan kontrak yang berterusan antara plaintif dan RCS. Plaintif sebaliknya adalah ahli kelab gabungan dan dibenarkan menggunakan kemudahan di premis hanya berdasarkan perjanjian timbal balik. Walau bagaimanapun, perjanjian timbal balik adalah antara RCS dan kelab gabungan dan akses plaintif ke premis adalah berdasarkan keahliannya dalam kelab gabungan. Oleh itu, plaintif tidak mempunyai locus standi untuk membuat tuntutan terhadap RCS kerana beliau bukan ahli RCS dan beliau bukanlah pihak kepada perjanjian timbal balik (lihat perenggan 17–18 & 21–22).

(2) Tuntutan plaintif tidak boleh dipertahankan kerana plaintif tidak mempunyai kapasiti untuk menyaman defendan pada mulanya. Walaupun dengan andaian bahawa plaintif mempunyai kausa tindakan terhadap defendan, tindakan plaintif di sini adalah pramatang kerana langkah yang ada untuk remedi domestik tidak digunapaki oleh plaintif (lihat perenggan 24 & 49).

(3) Plaintif tidak pernah diberi penghormatan untuk dipilih menjadi ahli jemputan RCS. Beliau hanya dibenarkan untuk mendapatkan akses ke premis dan menggunakan kemudahannya berdasarkan perjanjian timbal balik. Membawa kes plaintif pada tahap tertinggi (iaitu beliau adalah 'ahli jemputan', majlis masih berhak untuk menarik balik keistimewaan yang diberikan kepada plaintif dan mengisytiharkan beliau sebagai *persona non grata* (lihat perenggan 27–29).

(4) Sebuah organisasi swasta seperti RCS mempunyai kawalan ke atas ahlinya dan berhak untuk mengawal selia dan menentukan siapa yang boleh menjadi 'ahli'nya. Ia tidak terbuka kepada plaintif, yang dibenarkan masuk ke dalam premis itu semata-mata sebagai tetamu berdasarkan perjanjian timbal balik, untuk datang dan menegaskan hak untuk menjadi ahli RCS. 'Surat pengenalan' memperkenalkan plaintif sebagai ahli kelab gabungan dan meminta RCS untuk memberikan keistimewaan timbal balik kepada plaintif. Ini menunjukkan bahawa plaintif tidak diterima dengan mudah ke dalam premis sebagai ahli, tetapi beliau hanya dibenarkan menggunakan timbal balik kemudahan di premis itu berdasarkan perjanjian timbal balik (lihat perenggan 30 & 33).

(5) Kausa tindakan plaintif tidak boleh bergantung semata-mata pada dakwaan penafian keadilan semula jadi apabila tiada kewajipan

ditetapkan dalam kontrak atau tort antara plaintif dan RCS. Tugas mesti diwujudkan terlebih dahulu di pihak RCS agar plaintif mempunyai hak untuk didengar di hadapan majlis atau jawatankuasa tatatertib. Plaintif telah gagal mewujudkan sebarang tugas sedemikian (lihat perenggan 37).

(6) RCS ialah sebuah organisasi swasta. Ia bukan badan awam dan tidak menjalankan sebarang tugas awam. RCS tidak mempunyai tugas undang-undang kepada orang awam secara amnya, kecuali kepada ahlinya sendiri. Oleh itu, prinsip keadilan semula jadi berhubung dengan RCS hanya terpakai kepada ahli RCS yang mana ia terikat secara kontrak. Defendan tidak mempunyai sebarang kewajipan kontrak terhadap plaintif (lihat perenggan 38 & 40).

(7) Mahkamah seharusnya berhati-hati dalam mengganggu hal ehwal domestik kelab persendirian atau sosial (seperti RCS dalam hal ini). Bidang kuasa mahkamah dalam hal ini adalah terhad dan bersifat penyeliaan. Keputusan telah dibuat oleh majlis setelah pertimbangan aduan dan laporan insiden dan berdasarkan kuasa yang diberikan di bawah perlembagaan. Ia bukan hak mahkamah untuk menyemak merit atau sebaliknya aduan tersebut dan memutuskan sama ada majlis membuat kesimpulan yang betul. Peranan mahkamah adalah untuk melihat bahawa peraturan yang ditetapkan dalam perlembagaan dipatuhi. Dalam hal ini, majlis memang mematuhi peraturan yang ditetapkan dalam perlembagaan dan bertindak mengikut kuasa yang diberikan di bawah perlembagaan. Tiada pelanggaran keadilan semula jadi kerana: (a) plaintif bukan ahli RCS; (b) tiada perhubungan substantif antara RCS dan plaintif; dan (c) RCS tidak mempunyai apa-apa kewajipan berkontrak atau apa-apa kewajipan dalam tort terhadap plaintif (lihat perenggan 42–44).

(8) Berkenaan dengan perkara 5(1) perlembagaan persekutuan, defendan tidak mengambil nyawa plaintif, kebebasan peribadi atau kehidupan. Keputusan majlis tidak menjejaskan keahlian plaintif dengan kelab gabungan. Plaintif kekal sebagai ahli kelab gabungan, selagi beliau mematuhi peraturan dan perundangan kelab gabungan. Berkenaan dengan perkara 8(1) Perlembagaan Persekutuan, defendan tidak mendiskriminasi secara tidak adil terhadap plaintif. Keputusan telah dibuat selepas perbincangan aduan dan laporan insiden. Kuasa majlis digunakan secara adil dan munasabah serta tidak dilaksanakan sewenang-wenangnya. Tambahan pula, perkara 8(5)(a) memperuntukkan bahawa perkara ini tidak membatalkan atau melarang mana-mana peruntukan yang mengawal selia undang-undang peribadi. RCS bukan pihak berkuasa awam. Sebagai sebuah organisasi swasta, RCS berhak untuk mengawal selia hal ehwalnya sendiri dan cara ia berurusan dengan ahli dan tetamunya. Berkenaan dengan perkara 10(1) Perlembagaan Persekutuan, defendan tidak menafikan plaintif haknya

untuk kebebasan bercakap dan bersuara. Majlis mengambil tindakan terhadap plaintif atas sebab berdasarkan aduan dan laporan kejadian (lihat perenggan 52 & 54).

(9) Butiran yang diplidkan dalam pernyataan tuntutan plaintif berselari dengan tindakan fitnah yang tidak diplidkan sebagai kausa tindakan oleh plaintif. Kuantifikasi ganti rugi am seperti yang diperuntukkan oleh plaintif juga dilarang di bawah A 18 k 12(1A) KKM. Selain itu, tuntutan plaintif untuk RM2 juta sebagai ganti rugi nampaknya agak remeh dan menyusahkan. Ini ditambah dengan alasan seperti yang dinyatakan di atas, tindakan plaintif terhadap defendan adalah kes yang jelas dan nyata untuk pembatalan saman (lihat perenggan 59–60).]

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd)

Boustead Naval Shipyard Sdn Bhd v Dynaforce Corp Sdn Bhd [2015] 1 MLJ 284; [2014] 5 CLJ 533, CA (refd)

Darshan Singh v Farid Kamal Hussain (sued on behalf and for the Board of Members and Kelab Sukan Pulau Pinang) [2005] 3 MLJ 502, CA (folld)

Lembaga Kumpulan Wang Simpanan Pekerja v Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja [2000] 3 MLJ 65; [2000] 3 CLJ 81, FC (refd)

Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors [2005] 5 MLJ 160, HC (refd)

Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16; [1993] 3 CLJ 606, SC (refd)

Tsang Yee Kwan v Majlis Perbandaran Batu Pahat [2011] 8 CLJ 913, CA (refd)

Legislation referred to

Federal Constitution arts 5(1), 8(1), (5)(a), 10(1), (1)(a)
Rules of Court 2012 O 18 r 12(1A), O 18 rr 19, 19(1)(b), 1(c), 1(d)
Societies Act 1966

David Samuel (Yasinthra with him) (Chambers of Firdaus) for the plaintiff.
S Sri Sujalan (Fauzi Ngah & Neasa) for the defendant.

Quay Chew Soon JC:

INTRODUCTION

[1] The defendant ('D') filed an application vide encl 6 ('encl 6') to strike out the plaintiff's ('P') writ of summons and statement of claim ('SOC'). Enclosure 6 was made under O 18 r 19(1)(b), (c) and (d) of the Rules of Court 2012 ('the ROC') and under the inherent jurisdiction of the court. I allowed

encl 6. These are the grounds of my decision.

BACKGROUND

[2] D is the Royal Commonwealth Society of Malaysia ('RCS'), which is a private organisation registered under the Societies Act 1966. RCS is governed by its Constitution ('Constitution'). All members and guests who use the facilities at the premises of RCS ('premises') are bound by and shall comply with the Constitution at all times. The council of RCS ('council'), established under the Constitution, is the body responsible for the management of the affairs of RCS.

[3] P's action arises from a decision of the council which declared P as a persona non grata due to his unbecoming behaviour ('decision'). The decision was made at a meeting of the council held on 30 May 2019 ('council meeting') under the powers conferred to the council by the Constitution.

[4] According to D, P is not a member of RCS. Instead P is a member of the Royal Ipoh Club ('affiliate club'). The affiliate club is a club affiliated with RCS under a reciprocal arrangement established in 1989 between RCS and the affiliate club ('reciprocal arrangement'). P is allowed to enter the premises and use its facilities as a guest based on his membership in the affiliate club after he presents a 'letter of introduction' from the affiliate club.

[5] The reciprocal arrangement is subject to the Constitution and the by-laws of RCS. All members of affiliated clubs who are permitted to enter and utilise the facilities at the premises as a guest are bound by and must abide by the Constitution and the by-laws at all times.

[6] D received two complaints against P's behaviour while he was staying at the premises on 19 May 2019 and 20 May 2019 ('complaints').

[7] The first complaint was brought by an employee of RCS. This stated that P had exhibited rude and impolite behaviour towards certain employees of RCS and also disturbed the peace of certain members of RCS on 19 May 2019.

[8] The second complaint was brought by a member of RCS ('said member'). This stated that P behaved rudely towards the said member and his family by P scolding the said member without any basis on 20 May 2019. The second complaint was supported by the reports of certain employees of RCS who stated that P's conduct was unreasonable and rude ('incident reports').

[9] The complaints were referred to the council. At the council meeting,

members of the council deliberated on the complaints and the incident reports and decided to declare P as a persona non grata. The effect of the decision is that P will not be allowed entry into the premises thereafter.

[10] Pursuant to r 16(a) of the Constitution, the council has the power to issue persona non grata notices to any guest who exhibits an unbecoming behaviour. In which case, that person's name must be displayed on the notice board of RCS. Rule 16(a) of the Constitution reads:

> Rule 16: Powers of the Council
>
> (a) The council is authorised to issue notices of Persona Non Grata on any person or guest for any unbecoming behaviour in the Society. The name of such person or guest shall be posted on the notice board of the Society.

[11] P complains that the decision was made without D issuing any show cause notice to P or giving him a right to be heard. P's claim is premised on two causes of action ie: (i) denial of natural justice; and (ii) violation of constitutional rights.

[12] The SOC prayed for the following reliefs:

(a) a declaration that the decision made by the council at the council meeting on 30 May 2019, which declared P as a persona non grata on the premises of RCS, is null and void;

(b) an order that D removes P's name from the list of those declared as persona non grata posted at the notice board of RCS;

(c) general damages of RM1m; and

(d) aggravated damages of RM1m.

DECISION

[13] The law pertaining to striking out of a party's pleading under O 18 r 19 of the ROC is well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule. This summary procedure can only be adopted when it can be clearly seen that a claim is on the face of it obviously unsustainable. It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action (see the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7).

[14] The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious. The court is not concerned at this stage with the merits of the claim. So long as the pleadings disclose some cause

of action or raise some questions fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out.

[15] In *Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16 at p 24; [1993] 3 CLJ 606 at p 612, the Supreme Court remarked that the lower court should have scrutinized the evidence in order to decide whether the action was bound to fail. The court held that an action can be summarily disposed if there is an absence of conflict of material evidence or of conflict of affidavits on material points. So that seemingly triable or difficult issues could be readily decided in such a way as to lead to the conclusion that the action was bound to fail.

[16] Bearing in mind these legal principles, I am of the view that the SOC does not disclose a reasonable cause of action. I find the instant suit to be frivolous or vexatious. In my opinion, P's claim is obviously unsustainable and is bound to fail if it was to proceed to trial. My reasons are as follows.

RECIPROCAL ARRANGEMENT IS BETWEEN RCS AND THE AFFILIATE CLUB

[17] P avers that RCS had neglected or failed to issue any show cause notice with regards to the complaints. That RCS declared P a persona non grata without giving him an opportunity to defend himself. However, it must be pointed out that P is not a member of RCS. There is no continuing contractual relationship between P and RCS.

[18] P is a member of the affiliate club instead. P was allowed to use the facilities at the premises only by virtue of the reciprocal arrangement. But the reciprocal arrangement is between RCS and the affiliate club. P's access to the premises is based on his membership in the affiliate club. There is therefore no privity of contract between P and D.

[19] Under the doctrine of privity, only parties to a contract may sue and be sued under the contract. In *Tsang Yee Kwan v Majlis Perbandaran Batu Pahat* [2011] 8 CLJ 913 at 922, the Court of Appeal said:

> [27] ... It is trite law that *only the parties to a contract incur rights and obligations under the contract*. This is known as the *privity rule*. The second defendant as a third party to the SPA is not a party to the contract and has not provided consideration for the contract but the second defendant as a *third party has an interest in the performance of the contract*. It has been a long established rule that only the parties to a contract could incur rights and obligations under it. This is described as the doctrine of privity and by this principle it simply means that *third parties could neither sue nor be sued under a contract*.

[20] Similarly, in *Boustead Naval Shipyard Sdn Bhd v Dynaforce Corp Sdn Bhd* [2015] 1 MLJ 284 at p 308; [2014] 5 CLJ 533 at p 561, the Court of Appeal said:

> [69] The *doctrine of privity of contract is here to stay*. *In Murphy and Others v Bower* [1868] 2 IRCL 506, the court categorically stated that, *no stranger to the consideration can take advantage of a contract, although made for his benefit*. Bluntly put, *only the parties to the contract have enforceable rights and obligations under the contract*.
>
> [70] As an established principle of contract law, the common law doctrine of privity of contract stands for the simple proposition that, *no one but the parties to a contract can be bound by it or entitled under it*.

[21] It is not in dispute that the reciprocal arrangement was entered into between RCS and the affiliate club. Admittedly, the reciprocal arrangement brings benefit to P as it allows him to use the facilities at the premises based on his membership in the affiliate club. Thus, P may have an interest in the performance of the reciprocal arrangement. But this does not detract from the fact that P is not a party to the reciprocal arrangement. P therefore cannot bring an action against RCS merely by virtue of the reciprocal arrangement that exists between RCS and the affiliate club. If at all, P's remedy lies with or through his own club ie the affiliate club.

PLAINTIFF HAS NO LOCUS STANDI TO BRING AN ACTION AGAINST RCS

[22] P has no locus standi to bring a claim against RCS as he is not a member of RCS and he is not privy to the reciprocal arrangement.

[23] In *Lembaga Kumpulan Wang Simpanan Pekerja v Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja* [2000] 3 MLJ 65 at p 80; [2000] 3 CLJ 81 at p 98, the Federal Court said:

> We feel that *no purpose would be served by ordering further proceedings to continue as the respondent clearly has no locus standi* to bring an umbrella action on behalf of all its members on their respective individual contracts with their employer, the appellant, for which different individual considerations are relevant and applicable. We are unanimously of the view that both the High Court and the Court of Appeal adopted the wrong approach to an O 18 r 19 application because *with the respondent having no capacity to sue in the first place, the originating summons simply cannot stand and, therefore, it falls under the category of a case which is obviously unsustainable*.

[24] Similarly here, P's claim is obviously unsustainable as he does not have the right to bring an action against D. No purpose would be served by ordering the present suit to proceed to trial as P clearly has no locus standi. The SOC cannot stand as P has no capacity to sue D in the first place.

A PLAINTIFF IS NOT AN INVITED MEMBER OF RCS

[25] P argues that he is not to be classified as a guest of RC3 but that he is a member of RCS instead. P asserts that he is to be categorised as an 'invited member' under r 6(c) of the Constitution. I disagree.

B

[26] Rule 6(c) of the Constitution states:

> (c) Invited Members
>
> The Council may *honoris causa elect* any suitable organisation, association, group, or person to be an *Invited Member* of the Society and subject to the Rules 6(a)(iii) and 6(a)(vi), an Invited Member and his family shall enjoy all amenities and facilities of the Society accorded to Resident Fellows without payment of entrance fee or subscription.

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[27] From a plain reading of r 6(c) aforesaid, it is clear that an 'invited member' is one who has been selected by the council as a mark of esteem. Here P was never conferred the honour of being elected to be an invited member of RCS. He is only permitted to gain access to the premises and use its facilities by virtue of the reciprocal arrangement.

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[28] Even if it was true that P is an 'invited member', at best P would then be categorised as a 'privileged person'. Under r 6(a) of the Constitution, 'privileged persons' consist of, inter alia, 'invited members' and guests and visitors. However, D has the power to withdraw the privileges which are accorded to 'privileged persons'. This is pursuant to r 6(a)(viii) of the Constitution which states:

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> (viii) The Council shall have the power to withdraw from any Privileged Person individually or from any class of Privileged Persons as a class, either for a definite period or indefinitely or permanently all or any of the privileges accorded to such Privileged Person or class of Privileged Persons. Such powers shall be exercisable whether or not the privilege(s) arise in the rights of a member.

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[29] Taking P's case at its highest (ie that he is an 'invited member'), by virtue of r 6(a)(viii) and r 16(a) of the Constitution, the council is still entitled to withdraw the privileges accorded to P and to declare him as a persona non grata.

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[30] It cannot be disputed that a private organisation such as RCS has control over its members and is entitled to regulate and determine who can be its 'members'. It is not open to P, who is permitted entry into the premises merely as a guest by virtue of the reciprocal arrangement, to then come and assert a right to be a member of RCS.

[31] In an attempt to elevate his status from that of a 'guest', P made various factual assertions in his submission, which were not raised in his affidavit. However, D has adequately explained away those assertions.

[32] Firstly, under r 6(h)(i) of the Constitution, a guest can only enter the premises if invited or introduced by a member of RCS. P contends that he need not be invited or introduced by a member of RCS in order to gain access to the premises. And that what is required of him is to possess a valid membership card of the affiliate club in order to enter the premises. According to D however, P cannot gain access to the premises merely by possessing and showing a valid membership card of the affiliate club. On the contrary, a 'letter of introduction' must be presented by P.

[33] The 'letter of introduction' is issued by the affiliate club and is addressed to RCS. The 'letter of introduction' introduces P as a member of the affiliate club and requests RCS to extend reciprocal privileges to him. This shows that P is not readily accepted onto the premises as a member but he is merely allowed reciprocal use of the facilities at the premises by virtue of the reciprocal arrangement. This is borne out in a letter dated 5 January 1989 exchanged between RCS and the affiliate club pertaining to the reciprocal arrangement ('letter') which states:

> This affiliation should be with reciprocal arrangements under which Royal Ipoh Club's members holding valid 'Introduction Card' may bring in guests to the Royal Commonwealth Society and vice versa.

[34] Secondly, P contends that he is free to enter the premises and remain there without registering his name in the visitor's book kept by RCS. According to D however, P is not free to come onto the premises and remain there as long as he wishes. Under r 6(h)(i) of the Constitution, a guest (such as P) is only allowed into the premises up to a maximum of 12 times a year.

[35] Thirdly, under r 6(h)(ii) of the Constitution, a member introducing a guest shall be liable for all debts and other liabilities incurred by the guest. P contends that no other member of RCS is responsible for the debts incurred by him while on the premises. And that he alone is responsible for his own expenses during his stay at the premises. According to D however, by virtue of the reciprocal arrangement, any debt incurred by P which remains unpaid is the responsibility of the affiliate club since P is a member of the affiliate club and the contractual nexus is between rcs and the affiliate club. Moreover, the letter states:

> However, there are no signing privileges for bills incurred and payment must be made by coupons purchased.

[36] Fourthly, under r 6(h)(v) of the Constitution, guests are not permitted to play the slot machines or any similar games of chance at the premises. P contends that he was not prohibited from playing the slot machines at the premises. According to D however, the slot machines are situated in a demarcated game area of the premises and is managed independently. During his visit, P is provided with a temporary card. This temporary card is provided to all guests from reciprocal clubs in order for them to make payments since they are not accompanied by members of RCS to take responsibility for their bills. P was permitted to gain access to the game area by showing this temporary card and thus was not prohibited from playing the slot machines. However, P's ability to play the slot machines using the temporary card does not make him a member of RCS.

DENIAL OF NATURAL JUSTICE IS NOT A STAND-ALONE CAUSE OF ACTION

[37] In my view, P's cause of action cannot rely solely on the alleged denial of natural justice when no duty is established in contract or tort between P and RCS. My opinion is that a duty must first be established on the part of RCS in order for P to have a right to be heard before the council or a disciplinary committee. Here P has failed to establish any such duty. Any commercial relationship that exist between P and RCS is confined to the period during which P used the facilities at the premises as a guest. This does not grant P an indefinite right to be allowed onto the premises (which is private) and to use its facilities.

[38] RCS is a private organisation. It is not a public body and does not carry out any public duties. RCS does not owe legal duties to the public at large, save to its own members. Thus, the principle of natural justice in regards to RCS only applies to the members of RCS to whom it is contractually duty bound. This is provided for in r 7(c)(iv) of the Constitution.

[39] Under r 7(c) of the Constitution, disciplinary action may be taken against a member of RCS for conduct which is unbecoming or is injurious to the interests of RCS or which renders such member unfit to be associated with members of RCS. The disciplinary action may be in the form of a censure, suspension or expulsion. Before any disciplinary action is taken, the affected member must be afforded a right of hearing. Rule 7(c)(iv) of the Constitution states:

> (iv) The conduct of the member complained against shall be investigated and inquired into by the Panel of Inquiry and *the member shall be given full opportunity to defend himself* at the inquiry.

[40] Here P cannot raise breach of natural justice against D because P is not a member of RCS. D does not have any contractual obligation towards P. A private organisation like RCS cannot be held responsible to the general public.

[41] Moreover, D has no power to call P as a witness or issue him with a show cause letter regarding the complaints because P is not a member of RCS. P is merely a guest who has been allowed to enter the premises on the basis of the reciprocal arrangement. RCS has no authority over P and cannot compel P to answer the complaints.

[42] In my view, the courts ought to be slow to interfere with the domestic affairs of private or social clubs (such as RCS in this instance). The jurisdiction of the courts in this regard is of a limited and supervisory nature. I find support for this in the Court of Appeal case of *Darshan Singh v Farid Kamal Hussain (sued on behalf and for the Board of Members and Kelab Sukan Pulau Pinang)* [2005] 3 MLJ 502 at p 510 which said:

> [10] The question is: To what extent is the court likely to intervene in matters involving domestic tribunal of a social club, as in the present case, as opposed to tribunals sitting in judgment over matters of a trade or profession. The stand taken by the court is succinctly stated by Denning LJ in *Lee v Showmen's Guild of Great Britain* [1952] 1 All ER 1175 at p 1181:
>
> > The question in the present case is: To what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. *In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club, and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties*. On any expulsion they will see that there is fair play. They will see that that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules, but *will not otherwise interfere*: see *Labouchere v Earl of Wharncliffe* (18), *Dawkins v Antrobus* (1). It is very different with domestic tribunals which sit in judgment on the members of a trade or profession. They wield powers as great, if not greater, than any exercised by the courts of law. They can deprive a man of his livelihood. They can ban him from the trade in which he has spent his life and which is the only trade he knows. They are usually empowered to do this for any breach of their rules, which, be it noted, are rules which they impose and which he has no real opportunity of accepting or rejecting. In theory their powers are based on contract. The man is supposed to have contracted to give them these great powers, but in practice he has no choice in the matter. If he is to engage in the trade he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say: 'No'. A man's right to work is just as important, if not more important, to him than his rights of property.

A These courts intervene every day to protect rights of property. They must also intervene to protect the right to work.

[11] The approached as propounded by *Denning LJ in Lee v Showmen's Guild was cited with approval by the Federal Court in Chong Kah Lim & Ors v Yong Su Hian* [1979] 2 MLJ 11. *In this context we would also refer to the case of Singapore Amateur Athletics Association v Haron bin Mundir* [1994] 1 SLR 47. In that case Warren LH Khoo J delivering judgment of the CA said at p 59:

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> Counsel is obviously right on the law. The *jurisdiction of the courts in reviewing the decisions of domestic tribunals is clearly of a limited nature*. The decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence. The function of the courts is to see that the rules of natural justice have been observed, and that the decision has been honestly arrived at. The court has no power to review the evidence for the purpose of deciding whether the tribunal came to a right conclusion. It is *not the function of the court when exercising such supervisory jurisdiction to resolve issues of fact which are within the proper sphere of the tribunal's inquiry*.

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[43] The decision was made by the council upon deliberation of the complaints and the incident reports and based on the powers conferred under the Constitution. It is not for me to review the merits or otherwise of the complaints and decide whether the council came to a right conclusion. My role is to see that the rules laid down in the Constitution were observed. In this regard, my opinion is that the council did observe the rules set out in the Constitution and acted in accordance with the powers conferred under the Constitution.

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[44] I am also of the opinion that there has been no breach of natural justice in this instance as P is not a member of RCS. There is no substantive nexus between RCS and P. RCS does not have any contractual obligation nor any duty in tort towards P.

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PLAINTIFF SHOULD HAVE EXHAUSTED HIS DOMESTIC REMEDIES BEFORE RESORTING TO THE COURTS

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[45] In my view, P should have appealed through his home club ie the affiliate club to RCS to reconsider his persona non grata status as the reciprocal arrangement is between RCS and the affiliate club. P failed to exhaust the domestic appeal avenue through this method but has resorted to the courts, contrary to the Constitution and principles governing social clubs in general.

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[46] P's situation is akin to that of a guest of a member of RCS. If the guest is declared a persona non grata due to his/her unbecoming behaviour, only the

member who brought the guest can appeal against the action taken by RCS. This is because the guest does not have any locus standi to initiate an action against RCS.

[47] The avenue to appeal through P's home club ie the affiliate club against the decision of the council is of a general information that P himself ought to have known. RCS is not obligated to inform P of it. RCS ought not to be blamed for P's ignorance of the appeal avenue.

[48] In *Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors* [2005] 5 MLJ 160 at p 168, the High Court said:

> [25] Another point is this. The club is a social club. The Rules of the club provide that when a complaint is lodged against a member, the complaint must be investigated. The member will be given the right to be heard. Once the EDS hears all parties and witnesses, it will make a decision. That decision may be appealable either to GC or even to an EGM of the club. Thus, for the moment, the plaintiff has to put his case to the EDC just as any member of the club has to when a complaint is pending. Subsequently, if he is not happy with the decision of the EDC, *he has to resort to the domestic remedies available under the Rules*. In short, he *has to exhaust his domestic remedies before resorting to the courts*.

[49] Even on the assumption that P has a cause of action against D, P's action here is premature as the available avenues of domestic remedies were not exhausted by P.

NO VIOLATION OF CONSTITUTIONAL RIGHTS

[50] According to P, his constitutional rights under arts 5(1), 8(1) and 10(1) of the Federal Constitution were violated premised on the following arguments.

(a) pursuant to art 5(1), P has the right to be treated as a respectable affiliate club member. P is entitled to be treated by D without any prejudice and unfair discrimination;

(b) pursuant to art 8(1), P has the right to be treated fairly, equitably and equally in accordance with the law as other members of RCS; and

(c) pursuant to art 10(1)(a), P has the freedom of speech including the right to make a valid complaint and/or reprimand to the relevant party and D must respect P's right.

[51] P argued that his fundamental rights guaranteed by the Federal Constitution were violated when D unilaterally declared him to be a persona non grata. I disagree.

[52] With respect to art 5(1) of the Federal Constitution, D did not deprive P of his life, personal liberty or livelihood. The decision of the council does not affect P's membership with the affiliate club. P remains a member of the affiliate club, so long as he abides by the rules and regulations of the affiliate club. P however is not a member of RCS. He was allowed access to the premises only by virtue of the reciprocal arrangement. Under the Constitution, the council is entitled to withdraw the privileges accorded to P and to declare him as a persona non grata. There is no contractual nexus between RCS and P. RCS owes no legal obligation towards P.

[53] In respect of art 8(1) of the Federal Constitution, D did not unfairly discriminate against P. The decision was made after deliberation of the complaints and the incident reports. The powers of the council were used fairly and reasonably and were not exercised arbitrarily. Furthermore, art 8(5)(a) provides that this article does not invalidate or prohibit any provision regulating personal law. RCS is not a public authority. As a private organisation, RCS is entitled to regulate its own affairs and the way it deals with its members and guests. Indeed r 16(b)(i) of the Constitution states:

> (b) The Council shall have power from time to time to make, alter and repeal all such bye-laws as they deem necessary, expedient or convenient for proper conduct and management of the Society and ... may regulate:
>
> (i) The terms and conditions upon which guests, spouses and children of members and visitors may be permitted to use the premises and property of the Society;

[54] As regards art 10(1) of the Federal Constitution, D did not deny P his right to freedom of speech and expression. The council took action against P for cause based on the complaints and the incident reports. It is noted that the doors were not completely shut as P could have appealed through his home club ie the affiliate club to RCS to reconsider his persona non grata status. P failed to exhaust the domestic appeal avenue through this method but has resorted to the courts.

PLAINTIFFS CLAIM FOR RM2M IN DAMAGES

[55] P prayed for general damages and aggravated damages in the total sum of RM2m. The loss allegedly suffered by P are particularised in paras 27 and 28 of the SOC.

[56] Paragraph 27 of the SOC pleads:

> (1) Plaintiff has been unfairly and unjustly deprived of his access and enjoyment of the facilities and privileges in RCS by virtue of being an Affiliated Club Member;

(2) Plaintiff lost all rights as an Affiliated Club Member to use the facilities and accommodation facilities at RCS;

(3) Plaintiff's reputation and his good standing have been tarnished among RIC (Affiliate Club) and RCS club members;

(4) Plaintiff's activities in his professional capacity have been disrupted and have been affected by RCS's actions and defaults; and

(5) The Plaintiff had to bear the legal cost and courts cost to seek expertise and legal advice in filing this action.

[57] Paragraph 28 of the SOC pleads:

(1) The Plaintiff's position as Chief Justice for Native American Nations; International Law Partner and Advisor to Messrs CM Sundram Advocates and Company, Kuching, Sarawak; Chief Legal, Economic and Political Advisor to the de facto Government of Borinken (formerly Puerto Rico) in the Caribbean; CEO of the Boriken Peoples' Treasury has been tarnished;

(2) The conduct and actions of the RCS leading up to the point of the Plaintiff's labelling as Persona Non Grata on RCS's notice board resulted with a pernicious effect on the dignity, pride and respect enjoyed by the Plaintiff as the Chief Justice for Native American Nations; International Law Partner and Advisor to Messrs CM Sundram Advocates and Company, Kuching, Sarawak; Chief Legal, Economic and Political Advisor to the de facto Government of Boriken (formerly Puerto Rico) in the Caribbean; CEO of the Boriken Peoples' Treasury;

(3) The RCS has degraded and insulted the Plaintiff by sending a letter dated 7.6.2019 stating that the Plaintiff has been labelled a 'Non Grata Persona' and suggested the RIC (Affiliate Club) to take action against the Plaintiff; and

(4) RCS unfairly discriminated the Plaintiff, acted unjustly and motivated with malice in arriving at the decision to label the Plaintiff as 'Persona Non Grata' posted at the Notice board of RCS.

[58] In response to the above credentials, D produced a letter dated 14 September 2020 from another social club, namely the Royal Selangor Club. The said letter stated that P was expelled from that club because he was found guilty of various charges that was brought against him. The said letter further stated that P filed a suit against that club with regard to his expulsion.

[59] The particulars pleaded in the SOC to support P's claim borders an action for defamation. But defamation was not pleaded by P as a cause of action. I also observe that quantification of general damages is prohibited under O 18 r 12(1A) of the ROC. P's claim for RM2m in damages seems to me to be rather frivolous and vexatious in nature.

A CONCLUSION

[60] For the reasons above, I am satisfied that this is a plain and obvious case for striking out. I therefore allowed encl 6. I ordered P to pay costs of RM5,000 to D.

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Application allowed with costs.

Reported by K Selvaraju

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